

145 FERC ¶ 61,289  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

December 30, 2013

In Reply Refer To:  
Wyoming Interstate Company, L.L.C.  
Docket No. RP14-223-000

Wyoming Interstate Company, L.L.C.  
Attention: Francisco Tarin  
Post Office Box 1087  
Colorado Springs, CO 80944

Dear Mr. Tarin:

1. On November 26, 2013, Wyoming Interstate Company, L.L.C. (WIC) filed tariff records<sup>1</sup> to (i) update two previously accepted non-conforming firm transportation service agreements (FTSA), (ii) remove references to two expired non-conforming FSAs from the List of Non-Conforming FT Agreements, and (iii) remove five negotiated rate FSAs from the Statement of Negotiated Rates. WIC requests that the Commission accept the non-conforming FSAs as the nonconforming provisions do not adversely affect other customers and are not unduly discriminatory. WIC's tariff records are accepted, effective January 1, 2014, subject to conditions.
2. WIC states that in a recent review of its FSAs it identified an updated version of a previously accepted non-conforming FTSA with Marathon Oil Company (Marathon), FTSA No. 41208000, which needs to be filed with the Commission to reflect the third party rate charged for off-system capacity. As a result of that review, WIC also identified a contract provision in FTSA No. 41212000 with Yates Petroleum Corporation (Yates) that may be considered a non-conforming provision. Yates FTSA No. 41212000 contains a "step-down" provision which provides for a reduction in the maximum daily quantity (MDQ) of the agreement at annual intervals for the duration of the agreement. Paragraph 11 of the Yates FTSA contains a fill-in-the-blank provision for a contractual right-of-first-refusal (ROFR) which would be applicable to each increment of the MDQ "step-down". The contractual ROFR could be utilized by providing a notice from Yates to WIC not less than three months from each expiring increment of capacity. General Terms & Conditions Section 4.10(a)(ii) of WIC's tariff requires a notice period of

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<sup>1</sup>See Appendix.

six months from the expiration date for FTSA's of three years or less and twelve months from the expiration date for FTSA's with terms greater than three years.

3. WIC states its tariff authorizes the use of rollover and contractual ROFR provisions in its FTSA's. WIC states the use of a shortened notice period and rollover is permitted by the WIC tariff provision allowing a shipper to rely on its contractual ROFR provision instead of the procedures which govern a regulatory ROFR. WIC requests the Commission accept this ROFR provision.

4. Public notice of the filing was issued on November 27, 2013. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.<sup>2</sup> Pursuant to Rule 214,<sup>3</sup> all timely filed motions to intervene and any unopposed motions to intervene out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

5. In *Columbia Gas Transmission Corporation*,<sup>4</sup> the Commission clarified that a material deviation is any provision in a service agreement that (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (2) affects the substantive rights of the parties. A material deviation may be permissible if the Commission finds that such deviation does not constitute a substantial risk of undue discrimination.<sup>5</sup> Therefore, there are two general categories of material deviations: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination.

6. While WIC's negotiation of a contractual ROFR with a shipper is permissible, it is not permissible for a negotiated contractual ROFR to "supersede" the provisions of WIC's ROFR as stated in its tariff. A contractual ROFR is equivalent to the tariff ROFR and is subject to the ROFR process set forth in the tariff.<sup>6</sup> Providing Yates with a shortened notice provision conveys a valuable right to Yates and presents a substantial risk of undue discrimination. For this reason, we direct WIC to either remove the contractual ROFR language which provides Yates the right to notify of its intent to

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<sup>2</sup> 18 C.F.R. § 154.210 (2013).

<sup>3</sup> 18 C.F.R. § 385.214 (2013).

<sup>4</sup> 97 FERC ¶ 61,221 (2001) (*Columbia*).

<sup>5</sup> *Id.* at 62,004.

<sup>6</sup> *Kinder Morgan Interstate Gas Transmission, LLC*, 119 FERC ¶ 61,225 (2007).

exercise the ROFR no less than three months prior to the expiration of the increment of capacity or revise the notice provision to comply with its tariff. The proposed tariff records are accepted subject to WIC filing to satisfy these conditions within 30 days of the issuance of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

APPENDIX

Wyoming Interstate Company, L.L.C.  
FERC NGA Gas Tariff  
WIC Tariff

Accepted Effective January 1, 2014, Subject to Conditions

Part I: Overview, Section 1 - Table of Contents, 12.0.0

Part II: Stmt. of Rates, Section 4.2 - Reserved, 3.0.0

Part II: Stmt. of Rates, Section 4.5 - Reserved, 3.0.0

Part II: Stmt. of Rates, Section 4.6 - Reserved, 2.0.0

Part II: Stmt. of Rates, Section 4.8 - Reserved, 3.0.0

Part VII: Non-Conforming, , 6.0.0

Part VII: Non-Conforming, Section 10 - Yates Petroleum Corporation #41212000, 0.0.0

Part VII: Non-Conforming, Section 10.1-Yates Petroleum Corporation#41212000 Exhibit A, 0.0.0

Part VII: Non-Conforming, Section 10.1-Yates Petroleum Corporation#41212000 Exhibit B, 0.0.0

Part VII: Non-Conforming, Section 11 - Marathon Oil Company #41208000, 0.0.0

Part VII: Non-Conforming, Section 11.1 - Marathon Oil Company #41208000 Exhibit A, 0.0.0

Part VII: Non-Conforming, Section 11.2 - Marathon Oil Company #41208000 Exhibit B, 0.0.0